IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22189 of 2008
ARUN YADAV
Versus
STATE OF BIHAR
With

Cr.Misc. No.40708 of 2007
AJAY YADAV
Versus
STATE OF BIHAR

03/ 06.08.2008 Heard all sides.

The two petitions arise out of Gaya (Muffasil) P.S. Case No. 114 of 2004 under Section 302 /34 of the IPC. The fardbeyan is that of the deceased in which he alleged that the two petitioners, one each in the two petitions, along with two others, fired shots at him, so as to injuring him. The deceased stated that the persons of the locality shifted him to N.M.C.H. Gaya for treatment. The date of the occurrence is 3.8.2004 and the deceased died on 12.8.2004 i.e. nine days after the incident.

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The contention is that the deceased could not have been in sound state of mind and health, so as to make the statement, which is now the basis of the FIR. The further contention is that none-else came to support the participation of the petitioners in the incident and the solitary support comes from the son of the deceased, who

was examined in paragraph 69 of the case diary. It was contended that the son of the deceased adds up two names to the names of four accused persons named in the FIR and as such, he will not be treated as a competent witness to make a correct statement as a witness. Other persons who were examined, did not identify any one.

There is much controversy on the addition because two facts are on record and the learned counsel appearing for the informant as also the learned Addl. P.P. have placed heavy reliance on the statement of the deceased and have submitted that it could be the denying declaration of the deceased and as such it is relevant. The other argument is that the deceased might have faulted in identifying or naming the persons other than those named by him, who have subsequently been named by his son.

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The learned counsel appearing for the petitioners have laid much stress on the fact that the deceased had as many as 17 wounds caused by fire arm, four over his body and as such he could not have been able to make the above statement. The court did not want to express any opinion upon the competence of the deceased as regards his health

and making of the statement. However, one has always to see the reality that the date of occurrence is 3rd of August, 2004 and the deceased died on the 12th of August, 2004 and thus, he was alive for eight days. The resiliance of a man to fight adverse circumstance and the supports from the family members in the present day time could create any circumstance which could make a statement probable or improbable. The man was living for eight days after being injured so brutally. He was hospitalized in a higher centre of the State and was being treated. As such, it would be futile to say anything on the merits of the statement, more so when it has to be judged by the trial court.

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Several witnesses have made statements about the incident. The informant stated about the participation of the petitioners and other accused persons. The names of the two petitioners have also been taken by the son of the deceased.

Regard being had to the above circumstances, I am not inclined to release the petitioners Arun Yadav and Ajay Yadav on bail. Petitions are dismissed.

DKS/ **(Dharnidhar Jha, J)**